Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Petition for Declaratory Ruling to Clarify Provisions of Section 322(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance	)	WT Docket No. 08-165

To: The Commission

REPLY COMMENTS OF THE CITY OF SAN ANTONIO, TEXAS

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REPLY COMMENTS OF THE CITY OF SAN ANTONIO, TEXAS

The City of San Antonio, Texas, files these reply comments in response to the opening comments filed in this proceeding concerning CTIA's Petition for Declaratory Ruling ("Petition").[1]

INTRODUCTION AND SUMMARY

The overwhelming majority of commenters opposed the Petition and agreed with San Antonio that the Commission has no legal authority to grant any of the relief that CTIA seeks, and that even if the Commission had such authority, there is no rational basis for concluding that the court remedy of § 332(c)(7)(B)(v) is not, and has not been, fully adequate to handle any wireless siting disputes as they arise. Indeed, of the roughly 400 comments filed in response to the Petition, over 360 opposed the Petition, while only 16 commenters supported it.

[1] Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA – The Wireless Association® to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and To Preempt under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, DA 08-1913 (Aug. 14, 2008), *as amended* Sept. 10, 2008 (DA 08-2070).

The reason should be obvious: § 332(c)(7) clearly withholds from the Commission jurisdiction to do what CTIA seeks.[2] Industry commenters supporting the Petition add nothing on this score; they merely rehash the faulty legal arguments made by CTIA in its Petition,[3] arguments that, as the record shows, would improperly rewrite § 332(c)(7) and stand it on its head.[4]

Try as they might, wireless industry commenters also cannot demonstrate any need for Commission intervention into § 332(c)(7) even if it had the authority to do so (which it does not). The best industry can do is to try to divert the Commission's attention with isolated, anecdotal, and largely unidentified, much less verified, complaints about alleged abuses of local zoning authorities. Industry conveniently ignores, however, the larger picture – both the nearly 200,000 new wireless sites that CTIA itself proudly proclaims have been installed since 1996 when § 332(c)(7) was enacted, and the expedited court remedy that § 332(c)(7)(B)(v) provides, a remedy that wireless carriers have not been shy about invoking.

What the wireless industry really seeks is what the statute does not allow: A Commission rewrite of § 332(c)(7) that would empower the Commission to craft a national wireless zoning code. Under the wireless industry's proposed national zoning code, (1) local wireless siting decisions must be made more quickly than all other types of local zoning decisions (and virtually any other type of federal, state or local government decisions as well); (2) only one factor

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[2] *See*, *e.g.*, San Antonio Opposition at 1-22; Los Angeles Opposition at 4-23; League of Calif. Cities Comments at 4-26; GMTC Comments at 4-12; Fairfax County Comments at 6-19; NATOA Comments at 6-20; Univ. of Michigan Comments at 2-4.

[3] MetroPCS Comments at 4-6; Alltel Comments at 5-6; AT&T Comments at 3-8; RCA Comments at 2-5; Sprint Comments at 8; T-Mobile Comments at 9-12; USCC Comments at 4; Verizon Wireless Comments at 5-6 & 9-10; NextG Comments at 4, 10 & 14-16; PCIA/DAS Forum Comments at 4-6, 13-15.

[4] *See* filings cited in note 2 *supra*. Moreover, at least two industry supporters either conceded that the Commission's authority to grant the relief requested is less than clear, or explicitly declined to address the question. *See* ALEC Comments at 4; USCC Comments at 3. And another industry commenter opposed CTIA's "deemed granted" proposal. Sprint Comments at 9-11.

(whether or not collocation is involved) is relevant, and *no* others (such as, for example, whether the area is residential, commercial, or industrial, whether the area is historical, whether it is in an airport flight path, the height or appearance of the proposed structure, among others) are relevant; and (3) wireless siting requests (and apparently only wireless siting requests) are exempt from any local variance requirements. This is precisely the "'cookie-cutter' solution" that Congress rejected in § 332(c)(7)'s plain language and the *1996 Conference Report*.[5]

I. THE COMMENTS CONFIRM THAT THE COMMISSION HAS NO LEGAL AUTHORITY TO GRANT THE RELIEF CTIA REQUESTS.

A. Wireless Industry Commenters Add Nothing to CTIA's Misinterpretation of § 332(c)(7).

Several commenters agreed with us and argued persuasively that § 332(c)(7) denies the Commission the authority to do what CTIA requests.[6] They also noted that even the Commission's own website states that except for radio frequency ("RF") matters, all § 332(c)(7) matters "are to be resolved exclusively by the courts."[7]

For the most part, wireless industry and other commenters supporting the Petition merely summarized and repeated the Petition's arguments as to why the Commission supposedly has legal authority to act, offering no legal justifications beyond those asserted by CTIA.[8]

As we and several other commenters noted, the arguments of CTIA and its allies simply fail to come to grips at all with § 332(c)(7)'s statutory language and legislative history, as well as

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[5] *Town of Amherst v. Omnipoint Communications*, 173 F.3d 9, 17 (1st Cir. 1999). H.R. Confer. Report No. 458, 104th Cong., 2d Sess. at 207-209 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 221-223 ("*1996 Conference Report*").

[6] *See* comments cited in note 2 *supra*.

[7] *FCC Federal Guidelines for Local and State Government Authority over the Siting of Personal Wireless Service Facilities*, *available at* http://wireless.fcc.gov/siting/local-state-gov.html (last visited Oct. 10, 2008). *See* Los Angeles Opposition at 5.

[8] *See* comments cited in note 3 *supra*.

the abundant court precedent construing it.[9] Since there has not been a substantive response to those legal arguments, we will not repeat them here, but will summarize them briefly:

(1) Except for matters relating to RF emissions under § 332(c)(7)(B)(iv), the courts, not the FCC, have exclusive jurisdiction over § 332(c)(7)(B);

(2) What constitutes "a reasonable period of time" within the meaning of § 332(c)(7)(B)(ii) is to be measured by the amount of time each particular local zoning authority takes to act on similar non-wireless siting applications, *not* uniform nationwide "shot clocks" as CTIA proposes here;

(3) Section 332(c)(7)(A) provides that other than § 332(c)(7)(B), "nothing in this Act" – *including §§ 201(b) and 253* – "limit[s]," or even "affect[s]," local authority over the placement, construction and modification of wireless facilities; and

(4) The Sixth Circuit's reasoning in *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008) ("*ACM*"), has no application to § 332(c)(7) because § 332(c)(7) differs radically from §§ 621(a)(1) and 635(a), the statutes at issue in *ACM*.

(5) The scope of the "prohibition" language in § 332(c)(7)(B)(i)(II) differs from, and is narrower than, the scope of the "prohibition" language in § 253(a).

(6) Even if § 253 applied (which it does not due to § 332(c)(7)(A)), the § 253 relief sought in the Petition is flatly inconsistent with court precedent construing § 253(a), *see Sprint Telephony PCS, L.P. v. County of San Diego*, ____ F.3d ____, 2008 WL 4166657 (9th Cir. Sept. 11, 2008) (*en banc*) ("*San Diego II*"); *Level 3 Communications v. City of St. Louis*, 477 F.3d 528 (8th Cir. 2007).[10]

B. The Wireless Industry's Additional Legal Arguments Are Baseless.

Wireless industry commenters make a few attempts to amplify CTIA's misguided legal analysis of § 332(c)(7), but their attempts uniformly fail.

[9] *See* comments cited in note 2 *supra*.
[10] *See* comments cited in note 2 *supra*.

First, some industry commenters echo the Petition by complaining about a supposed "Catch-22" in construing the "reasonable period of time" and "failure to act" language in § 332(c)(7)(B)(ii) & (v); according to them, the lack of a uniform time-certain deadline means that "if they appeal too early, their appeal may be premature; if they wait too long, it may be untimely."[11]

This complaint is misdirected at multiple levels. As an initial matter, the courts, not the Commission, have exclusive jurisdiction to construe § 332(c)(7)(B)(ii)'s "reasonable period of time" and § 332(c)(7)(B)(v)'s "failure to act."[12] Moreover, even if the Commission did have jurisdiction to construe those provisions (which it does not), the statutory language, legislative history and court precedent construing § 332(c)(7) are in unanimous accord that neither provision permits the uniform, nationwide "shot clocks" that the Petition seeks; instead, the law is crystal clear that a "reasonable period of time" must be determined on a case-by-case basis based on the specific facts and circumstances of a particular wireless siting application and the time that a local zoning authority takes to act on similar non-wireless zoning applications.[13]

Finally, wireless industry commenters grossly overstate any sort of litigational dilemma they face. Before any would-be litigant files a complaint, it can (and certainly should) evaluate the particular facts present and the applicable law to make an assessment of the strength or likelihood of success of its claim, but the litigant is never guaranteed the success that the wireless industry improperly seeks with the "shot clocks" it seeks here. A wireless provider does, however, have considerable guidance in deciding whether a local zoning authority has "failed to act" within "a reasonable period of time." There is, of course, court precedent on what those

[11] MetroPCS Comments at 4-5. *Accord* AT&T Comments at 6; RCA Comments at 4-5, Sprint Comments at 4; T-Mobile Comments at 9.
[12] *See*, *e.g.*, San Antonio Opposition at 6-7, 10-12, 15-16; Los Angeles Opposition at 4-12.
[13] *See*, *e.g.*, San Antonio Opposition at 12-16; Los Angeles Opposition at 7.

terms mean.[14] Furthermore, the *1996 Conference Report* informs a wireless siting applicant of what the yardstick is for "a reasonable period of time": The period of time that is that particular community's "usual period" for acting on similar non-wireless zoning and land use applications, including zoning variances and any public hearing process.[15] One would think that Fed. R. Civ. P. 11 would compel would-be § 332(c)(7)(B)(v) plaintiffs to do a rather straightforward pre-filing investigation into § 332(c)(7)(B) precedent and the particular facts at issue, but apparently the wireless industry wants the Commission to relieve its members of that obligation. In any event, if a wireless applicant does file its "failure to act" complaint prematurely, it can always re-file if the locality does not act.

Second, a few industry commenters try to amplify the Petition's request to preempt the application of local variance requirements to wireless siting applications, apparently without any regard to the specifics or scope of a particular community's local-law variance provisions. *E.g.*, Sprint Comments at 14; PCIA/DAS Forum Comments at 16. But the Supreme Court has held that, absent "unmistakenly clear" statutory language granting the Commission such authority, it has no general authority to intrude into the structural elements of state and local law. *Nixon v. Missouri Municipal League*, 541 U.S. 125, 140-141 (2004) (citations omitted). Far from furnishing the Commission with such "unmistakenly clear" authority, § 332(c)(7) provides "unmistakenly clear" language that the Commission does *not* have such authority. *See*, *e.g.*, San Antonio Opposition at 4-12. And Congress' decision was a wise one: The reasonableness of the imposition of a particular variance requirement on a wireless siting application can only be fairly assessed in the specific factual and local ordinance context where it is to be applied – *e.g.*, is a

[14] *See*, *e.g.*, CTIA Petition at 28 & nn. 67-70 & 30 & n.74 & precedent cited therein, and Los Angeles Opposition at 10, 14-15 & Exh. IV & precedent cited therein.

[15] *1996 Conference Report* at 208, *reprinted in* 1996 U.S.C.C.A.N. at 223. Of course, it is this Congressional yardstick that CTIA improperly tries to obliterate with its uniform "shot clock" deadlines.

variance only required in certain residential areas or historical districts?, what is the nature of the zoning limitation from which a variance must be sought? That a variance may be required for a wireless siting application in a particular zoning district, without more, says nothing about whether the variance requirement is consistent with § 332(c)(7)(B).

Third, some industry commenters, obviously dissatisfied with the Ninth Circuit's recent *en banc* decision in *San Diego II*, apparently seek to invite the Commission either to disagree with that decision or somehow to limit its applicability to wireless siting applications.[16] That, of course, goes well, and impermissibly, beyond the relief requested in the Petition. The Commission is no more of an intermediate appellate court between the federal courts of appeals and the Supreme Court when it comes to § 253(a) than it is with respect to § 332(c)(7). With regard to both provisions, that industry has not fared as well as it hoped in the courts is no reason, nor is it a permissible justification, for industry to try to transform the Commission into industry's own special, unelected, extra-judicial super-appeal forum.

C. Despite Its Disclaimers, What the Wireless Industry Seeks Is A Commission-Fashioned National Wireless Siting Code.

Although industry commenters deny it, claiming that they only seek to clarify "ambiguities" in § 332(c)(7) (which, as the record makes plain, the Commission could not legally do in any event[17]), what in fact the Petition and its supporting commenters really want is clear: For the Commission to adopt a uniform national wireless siting zoning code. And that, of course, is something § 332(c)(7) clearly forbids the Commission from doing.[18]

[16] Verizon Comments at 14-15. *See also* Calif. Wireless Assn. Comments at 4; Sprint Comments at 13-14.
[17] *See* Comments cited in note 2 *supra*.
[18] *See id.*

Industry tries, unsuccessfully, to camouflage the breadth of the Petition's requested relief in various ways. First, it claims merely to be trying to clarify "the nature and scope of [a wireless citing] request" that § 332(c)(7)(B)(ii) provides must be taken into account.[19] Industry seeks to obscure the fact that the Petition's requested relief would actually preemptively limit local consideration of "the nature and scope" of a wireless siting request to just a single factor – whether or not the application was for a collocated facility – to the *exclusion of all other factors*, such as the heighth of the requested structure, its proposed appearance, the nature and character of the immediately surrounding area or neighborhood, and safety considerations, just to name a few – all of which are typical considerations in land use applications and, as a result, the time it takes to act on them.

Likewise, by claiming that many localities have acted on some wireless siting requests within CTIA's proposed "shot clock" periods, industry seeks to belittle the adverse effects that the Petition's incredibly short proposed "shot clocks" would have on the local zoning process and the myriad of public interests which that process is designed to protect and balance. If, as industry claims, many if not most wireless siting requests are acted on expeditiously, that undermines the entire justification for the Petition (*see* Part II *infra*). Moreover, industry has provided the Commission with no idea whatsoever how many state and local zoning public hearing and appeal-right laws and how many local zoning actions CTIA's proposed "shot clocks" and other proposals would wipe away if they were adopted. But even leaving these considerations aside, the fact remains that uniform, nationwide, Commission-imposed "shot clocks" are the ultimate in a national wireless siting zoning code.

[19] *See*, *e.g.*, T-Mobile Comments at 9-10; NextG Comments at 9-11; PCIA/DAS Forum Comments at 7-8.

Perhaps inadvertently, the wireless industry and its supporters reveal the "national zoning code" nature of the requested relief by pointing to, and sometimes urging the Commission to follow, unenacted "model" wireless siting legislation, the National Programmatic Agreement for the Collocation of Wireless Antennas ("NPA"), and various state laws that have been enacted concerning wireless siting applications, all of which industry seems to view as "proof" that the "shot clocks" are reasonable.[20] But all that industry's citations to these models, the NPA, and state laws really prove is that what industry wants, and the Petition seeks, is a Commission-imposed national wireless zoning code. Yet industry does not, and cannot, cite one iota of authority that § 332(c)(7) can be so construed. Rather, all precedent and authority point unequivocally and unambiguously to the opposite conclusion.[21]

II. THE COMMENTS REVEAL NO WIRELESS SITING PROBLEM THAT § 332(c)(7)(B)(v)'S EXCLUSIVE AND EXPEDITED COURT REMEDY CANNOT HANDLE.

In an attempt to justify factually the relief sought in the Petition, wireless industry commenters provide supposed (although largely anonymous and unverified) examples of allegedly excessive delays by (often un-named and unidentified) particular local zoning authorities in acting on wireless siting applications.[22] But these anecdotes actually prove the opposite of what industry intends: There is no need or basis for Commission action.

First, even if one assumes for the sake of argument that industry's anecdotes are all accurate, they are mere twigs, while industry studiously ignores the huge forest standing before it: According to CTIA's own data, the number of wireless sites has grown exponentially since

[20] *See* ALEC Comments at 2-3; T-Mobile Comments at 10-11; Sprint Comments at 7-8; PCIA/DAS Forum Comments at 10; NextG Comments at 12-14.
[21] *See* Comments cited in note 2 *supra.*
[22] *See*, *e.g.*, T-Mobile Comments at 6-9 & attachments; MetroPCS Comments at 8-13; Sprint Comments at 5; Verizon Comments at 6-7, 11, 13-14; Calif. Wireless Assn. Comments at 2-3 & 5; Alltel Comments at 3-4; USCC Comments at 2-3.

1996 when § 332(c)(7) was enacted – a 700% increase representing almost 200,000 new cell sites.[23] Industry backhandedly acknowledges the point by conceding that "the vast majority of localities [are] reasonable,"[24] and "many zoning authorities act in an efficient, responsive, and timely manner when processing zoning requests."[25]

Second, even assuming *arguendo* that all of industry's anecdotes are accurate, and assuming further just for the sake of argument that each anecdote represents a violation of § 332(c)(7)(B), neither CTIA nor its supporters provide any reasoned explanation as to why the expedited (and exclusive) court remedy provided in § 332(c)(7)(B)(v) would not be fully adequate to address each and every anecdote. Industry has certainly not been shy about pursuing the § 332(c)(7)(B)(v) court remedy since that provision was enacted.[26]

Of course, industry would no doubt prefer that the Commission, through the preemptive rules CTIA seeks, bludgeon local governments into submission so that wireless providers can avoid § 332(c)(7)(B)(v) litigation altogether (in the case of CTIA's "deemed granted" and "variance preemption" proposals) or, if litigation occurs, tilt the outcome almost conclusively to industry's advantage (in the case of CTIA's "court presumption" proposal). But aside from being unseemly and unfair, industry's wishes are precisely what Congress chose *not* to grant the Commission the authority to do in § 332(c)(7).[27]

We think § 332(c)(7) represents a wise and prescient balancing of competing interests. But if industry or the Commission disagrees, their only remedy is with Congress, not the Commission.

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[23] San Antonio Opposition at 23.
[24] AT&T Comments at 2.
[25] MetroPCS Comments at 7. *Accord* Alltel Comments at 4; Sprint Comments at 6; AT&T Comments at 4.
[26] Indeed, an October 13, 2008, search of Westlaw's "ALLFEDS" database of all federal court decisions revealed roughly 320 court decisions that included some discussion of § 332(c)(7)(B) (research results on file with author).
[27] *See* Comments cited in note 2 *supra*.

III. THE COMMENTS ESTABLISH THAT THE PETITION'S "SHOT CLOCKS" ARE INCONSISTENT WITH AIR FLIGHT SAFETY REQUIREMENTS.

We noted in our opening Opposition that the Petition's proposed "shot clock" deadlines and other relief were inconsistent with the special local land use processes required for structures in civilian and military airport hazard districts and overlays established by local and state law. San Antonio Opposition at 24-25. Others agreed. ALPA Comments at 1-2; AOPA Comments at 1-2. As ALPA notes, "[i]n most cases only state and local zoning authorities hold power to approve or deny permits for construction, not the federal government (*e.g.*, FAA) . . . . [T]he FAA does not have the authority to prevent construction even if the structure will be a hazard to aviation." ALPA Comments at 1.

The FAA takes no position on the Petition, noting only that any Commission action on the Petition would not alter the requirements of 14 C.F.R. Part 77, and would not alter airports' obligations under 49 U.S.C. §§ 47101 *et seq*. FAA Comments at 1. FAA adds that a policy it adopted in November 2007 "waives the FAA requirements regarding aeronautical review of [communications] frequencies co-located on a structure previously studied by FAA." *Id*. at 2.

But FAA's comments do not answer the airport hazard questions presented by the Petition. FAA's collocation policy says nothing about new non-collocated wireless facilities, which would be subject to the Petition's 75-day "shot clock." And more generally, FAA does not claim the authority to halt construction of wireless facilities that are inconsistent with Part 77, and if the Petition were granted, wireless applications in airport hazard districts and overlays would be "deemed granted" (or, under the "court presumption" proposal, would subject local governments to a tilted-field lawsuit), regardless what 14 C.F.R. Part 77 or 49 U.S.C. §§ 47101 *et seq*. provide.

IV. SECTION 332(c)(7) DOES NOT APPLY TO THE INSTALLATION OF DISTRIBUTED ANTENNA SERVICE FACILITIES OR ANY OTHER WIRELESS SERVICE FACILITIES ON PUBLIC RIGHTS-OF-WAY OR OTHER PUBLIC PROPERTY, AND PCIA/DAS FORUM'S AND NEXTG'S ATTEMPT TO RAISE THOSE ISSUES HERE IS BEYOND THE SCOPE OF THE PETITION.

Two commenters, NextG and PCIA/DAS Forum, attempt to roam far beyond the scope of the Petition and ask the Commission to squeeze Distribution Antenna Systems ("DAS") into § 332(c)(7).[28] But their own description of DAS networks belies their attempt.

NextG and PCIA/DAS Forum both agree that DAS networks typically involve the installation of small wireless antennas on utility or light poles in the public rights-of-way ("ROW"), as well as in the installation of fiber cable in the ROW.[29] In other words, the aspects of DAS network architecture on which these two commenters rely to make complaints about allegedly unreasonable local delays do *not* involve typical land use and zoning requirements – local oversight of structures and development on private property – at all.[30] Rather, NextG's and PCIA/DAS Forum's complaints concern DAS providers' requests to install facilities in the ROW or on other municipal or public property.[31]

As pointed out in our opening Opposition (at 18 n.28), courts are in accord that § 332(c)(7) does *not* apply to requests to locate wireless facilities on municipal property (much less requests to install fiber cables in or on such property).[32] The reason should be obvious:

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[28] NextG Comments at 1-5 & 8-16; PCIA/DAS Forum Comments at 3 & 7-16.
[29] NextG Comments at 1 & 2-3 & n.1; PCIA/DAS Forum Comments at 3 & 7-8.
[30] *Cf.* PCIA/DAS Forum Comments at 7-8 ("Relatively few zoning ordinances address DAS directly" because it involves "installations within public rights-of-way").
[31] For this reason, DAS systems often present ROW franchising issues for local governments, not merely building or electrical permitting issues, as PCIA/DAS Forum misleadingly suggest. PCIA/DAS Forum Comments at 7-8.
[32] *See*, *e.g.*, *Omnipoint Communications Enterprises v. Township of Nether Providence*, 232 F. Supp. 2d 430, 433-36 (E.D. Pa. 2002); *Omnipoint Holdings v. City of Southfield*, 203 F. Supp. 2d 804, 814-18 (E.D. Mich. 2002); *Sprint Spectrum v. City of Woburn*, 8 F. Supp. 2d 118, 120 (D. Mass. 1998). Thus, to the extent that T-Mobile's proposed
(Continued. . .)

Negotiation of the terms and conditions of access to the ROW or other public or municipal property involves unique terms and conditions, such as compensation for and management of the ROW and other municipal property, that are not implicated at all in wireless siting applications involving private property. In this sense, a local government facing a request by a DAS network provider for access to local ROW or other municipal property stands *not* in the position of a local land use or zoning authority, but in the position of a private property owner from whom a wireless provider seeks to lease a cell site. And no one would seriously suggest that a property owner could or should be saddled with a federal "shot clock", on pain of "deemed granted" or "court presumption" relief, in deciding whether to grant a wireless provider access to the owner's property, and on what terms.

To the extent that the Communications Act of 1934, as amended,[33] speaks at all to ROW and poletop access requests of the type DAS providers make, it is § 253, not § 332(c)(7), that applies. Under § 253, however, among the issues would be (1) whether, based on the particular facts and circumstances of the locality where a DAS provider seeks such ROW access, the provider could prove that the local franchising or other requirements to which it objects constitute an "actual or effective prohibition" within the meaning of § 253(a);[34] and (2) whether the local requirements at issue constitute non-discriminatory and reasonable ROW compensation and/or ROW management protected under § 253(c).

But those are matters far beyond the scope of the Petition, and certainly in the case of § 253(c) ROW compensation and management issues (if not other issues), beyond the scope of

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(…continued)
"collocation" definition is intended to sweep in any "tower, roof top, water tank, *etc*." that is located on local government property (*see* T-Mobile Comment at 10), T-Mobile's definition is impermissibly broad.

[33] 47 U.S.C. §§ 151, *et seq.* (2000).

[34] *San Diego II*, 2008 WL 4166657 at *5 (quoting *Level 3*, 477 F.3d at 532). *Accord TCI Cablevision of Oakland County*, Memorandum Opinion and Order, 12 FCC Rcd. 21396 (1997); *Suggested Guidelines for Petitions for Ruling under Section 253 of the Communications Act*, 133 FCC Rcd. 22970, 22971-72 (1998).

the Commission's jurisdiction as well. *See* § 253(d). NextG's and PCIA/DAS Forum's allegations and requested relief accordingly have no place in this proceeding and must be rejected.

CONCLUSION

The Commission must deny CTIA's Petition.

Respectfully submitted,

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